



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

September 20, 2013

CHAN

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Marjorie Pierre**
Tax Registry No. 942355
32 Precinct
Disciplinary Case No. 2011-5757

The above named member of the service appeared before Assistant Deputy Commissioner Claudia Daniels-DePeyster on April 16, 2013 and was charged with the following:

DISCIPLINARY CASE NO. 2011-5757

1. Said Police Officer Marjorie Pierre, assigned to the 101st Precinct, while on-duty, on or about September 15, 2011, inside of the 101st Precinct Stationhouse, in Queens County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer was discourteous to Sergeant Alexander Wancel and Lieutenant Adrienne Pascal.

P.G. 203-10, Page 1, Paragraph 5

GENERAL REGULATIONS

In a Memorandum dated September 5, 2013, Assistant Deputy Commissioner Claudia Daniels-DePeyster found Police Officer Marjorie Pierre Guilty of Specification No. 1, in Disciplinary Case No. 2011-5757. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

Police Officer Pierre's actions were inappropriate within the structure of a paramilitary organization and members of the service must always address ranking officers with respect and courtesy. As such, a more severe penalty than what was recommended after trial is merited. Police Officer Pierre's misconduct in the instant matter warrants the forfeiture of thirty-two (32) suspension days previously served and thirteen (13) vacation days, as a disciplinary penalty.

Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

September 5, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Marjorie Pierre
Tax Registry No. 942355
32 Precinct
Disciplinary Case No. 2011-5757

The above-named member of the Department appeared before me on April 16, 2013 and May 8, 2013, charged with the following:

1. Said Police Officer Marjorie Pierre, assigned to the 101st Precinct, while on-duty, on or about September 15, 2011, inside of the 101st Precinct Stationhouse, in Queens County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer was discourteous to Sergeant Alexander Wancel and Lieutenant Adrienne Pascal.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

The Department was represented by Adam Sheldon, Esq., Department Advocate's Office, and Respondent was represented by Shahim Mashhadian, Esq.

Respondent, through her counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Police Officer Stephen Simco, Sergeant Alexander Wancel, and Lieutenant Adrienne Pascal as witnesses.

Police Officer Stephen Simco

Simco testified he has been a member of the Department for nearly 13 years and is assigned to the 101 Precinct. Simco stated that he never worked personally with Respondent, and they never filed complaints against one another. He has known her for a couple of years. On September 15, 2011 Simco was assigned as the telephone switchboard (TS) operator, and Respondent was assigned to a fixed post located at Beach 26 Street and Seagirt Avenue. Simco explained that an officer on a fixed post is "supposed to basically stand on that corner, and you don't leave unless you have another officer come relieve you from that spot." Respondent's post was created because it was a high crime area that required police presence at all times.

According to Simco, the patrol sergeant assigns meal times at the start of each tour during roll call, and each person gets a specific time. Meal, however is not guaranteed, "it is a privilege." If things occur throughout the day then an officer might not be able to sit down and eat. When assigned to a fixed assignment, if the meal time comes and no one shows up, the officer may call the desk officer to ask about his meal relief.

Simco stated that at about 7:45 p.m., Respondent called the TS to ask if anyone had been sent to relieve her for meal. Simco relayed Respondent's inquiry to Sergeant

Wancel, who told Simco to inform Respondent that “he was going to work it out and someone will be on their way.” Respondent called again 15 to 20 minutes later, wondering if Simco had sent anyone yet to relieve her at her post. As a police officer, Simco did not have the authority to send someone for meal relief unless it was done at the direction of a supervisor. As the TS operator, he was responsible for answering all of the civilian calls that came in. The telephone at the desk, in contrast, was designated for police-related calls and was typically answered by the desk officer. Simco handled Respondent’s second call by again informing Wancel of Respondent’s question. Wancel responded that he “was working it out, and somebody should be on their way shortly.” Simco relayed this information to Respondent. Wancel did not reprimand Respondent for calling the TS.

Simco observed Respondent enter the station house 15 or 20 minutes later and walk past the TS to the desk. At the time, Police Officers Muller and Zappia were in the immediate vicinity signing out, and Wancel and Lieutenant Adrienne Pascal were standing behind the desk. (Department’s Exhibit [DX] 1A is a photograph of the desk area including the TS, and DX 1B is a photograph of the view of the desk as one walked into the command.)

From his location at the TS, Simco could not see Respondent after she approached the desk, but he could hear the conversation that ensued. He heard Wancel ask Respondent if she wanted to go to meal. Respondent replied that she had to use the bathroom. When Wancel asked a second time if she wanted to go to meal, Respondent again said that she had to use the bathroom, this time more loudly. At no point did Respondent state to the supervisors that she had a bathroom emergency. Wancel and

Pascal then asked Respondent for a third time if she wanted to go to meal, and she said yes. Simco described the tone of the conversation as at first being regular. By the third question, however, Wancel and Pascal were speaking sternly. Simco explained, "They wanted an answer to their question because she wasn't answering it before that." Wancel and Pascal were not yelling or screaming. Simco was seated approximately three feet away while the conversation was taking place. He could not say with certainty that he heard every word that was exchanged during the conversation.

As Respondent walked away from the desk and walked through a set of double doors, Simco heard her say, "Assholes." Although Simco did not see Respondent as she made this comment, he had no doubt in his mind that it was in fact Respondent who made it. He explained, "I heard her voice, and she was the only one in that direction at the time." He did not hear Respondent say anything resembling "oh my God" or "my God" or anything else besides the word "assholes."

On cross-examination, Simco stated that he had not worked directly with Respondent before but recognized her face and her voice. Simco said, "She has a slight accent." According to Simco, because the TS is designated for civilian calls, an officer should call the TS only when given specific instruction to do so. Officers should instead call the sergeant at the desk. Wancel was the desk officer on the day of the incident. Simco never instructed Respondent not to call the TS since that was something that she should have known already. According to Simco, Respondent should have learned that rule in the Police Academy. He explained, "It's in the Patrol Guide. If you read the Patrol Guide, it tells you you are not supposed to call TS." Simco established that after

he informed Wancel that Respondent called twice, neither time did Wancel direct Simco to tell Respondent to stop calling the TS.

Simco testified that the fixed position at Beach 26 Street and Seagirt Avenue is approximately 25 to 30 minutes from the command by foot and five minutes by car. An officer assigned to meal relief can travel to the post by foot or car.

Simco stated that although he overheard Respondent's conversation that day, he was not paying attention to it. He did not recall if he received any calls during the conversation. He did not know who Respondent was directing the term "assholes" to when he heard her say it. Respondent's back was to Simco when she made the remark. She was approximately 30 feet from him and walking away. There was a holding cell to the right of the TS. Simco could not remember if there was anyone in the holding cell on the day in question. He did not hear anything coming from the cell area.

On redirect examination, Simco stated that he was unaware how Respondent got from her post to the command. He did not observe Respondent have a conversation with anyone other than Wancel and Pascal.

Upon further questioning by the Court, Simco stated that the female bathroom was located directly behind the double doors that Respondent walked through. Respondent never told Simco while on the phone with him that she needed a personal. She just wanted to know if her meal relief was being sent.

Sergeant Alexander Wancel

Wancel, a nine-year member of the Department, is currently assigned to the 101 Precinct. Respondent was assigned to his squad, and on September 15, 2011 he had

known her for approximately six months. Respondent was assigned to a fixed post on that day. Wancel described a fixed post as “face-to-face relief, meaning that she was in approximately a one or two block radius. She has to be stationary over there . . . She cannot leave the area unless another officer relieves her.” The Commanding Officer (CO) designated Respondent’s post to be one that required face-to face relief due to violence in the area.

Wancel was assigned as desk officer on the day of the incident, and Pascal was the patrol supervisor. Respondent was assigned a meal time of 8:00 p.m. It was the responsibility of both the desk officer and patrol supervisor to provide meal relief. Wancel explained that meal relief was “generally, based on how busy the day is, what the jobs are going on, we will find an available officer to relieve the officer on fixed posts.” He continued, “If a person is given meal time [8:00 p.m.], we will assess the situation for the day, and then give them meal accordingly.” It is not, however, mandatory that an officer receives meal relief since “some days are busier than others, some days you don’t have the manpower, some days it’s just too much if you need certain officers based on what’s going on out there for safety reasons. People can’t always get meal.”

Regarding the date in question, Wancel stated that because of a shooting that had occurred earlier, the precinct was busy and meal reliefs were delayed. Wancel recounted that at about 7:45 p.m., Simco informed him that Respondent was calling the TS inquiring about her meal relief. Wancel told Simco that he was already in the process of getting a meal relief for her. Respondent called again at 8:00 or 8:05 p.m. stating that she wanted her meal. Wancel testified that this was not the normal procedure for requesting meal. He explained, “The officers are given a meal time, and they stick by the meal time,

unless there are exigent circumstances. If she had a question about the meal time, she can call the desk and ask whether meal is delayed, but there is no need to call a fellow officer and say I want my meal.” The TS operator has other functions and has no authority to grant someone meal relief or to schedule someone’s meal relief. Wancel was never made aware of any exigent circumstances regarding Respondent’s request for meal, nor did Respondent indicate she had to take a personal or use the bathroom.

Respondent arrived at the command at approximately 8:25 p.m., so Wancel assumed that she was relieved at her post a few minutes earlier. He did not know if Respondent was traveling on foot or by vehicle. Upon entering the station house, Respondent approached the desk area. Wancel spoke to her about the proper procedure concerning meal relief, explaining to her that there was no need for her to call the TS twice within a 15-minute period. He informed her that he was dealing with a violent crime that had taken place earlier in the day but that he had not forgotten about the meal relief assignments. Wancel spoke to Respondent in a “normal, but direct tone.” At no point did he yell at Respondent. Respondent did not indicate to Wancel that she had called because she needed to take a personal. Wancel stated that during the conversation, Respondent “seemed to be smirking and rolling her eyes.” Wancel interpreted this as a sign of disrespect. At that point, Pascal addressed Respondent, informing her that she was well aware of the meal times. During the conversation, Respondent was talking in a low tone, and Wancel had difficulty hearing what she was saying. This was not typical, as Wancel regularly worked with Respondent and was usually able to understand what she said. He was able to recognize her voice. Wancel asked Respondent if she could speak louder, and Respondent responded by raising her voice to a level that Wancel

found to be a little disrespectful. Wancel had to ask her to lower her voice. Officers Muller, Simco, and Zappia were present in the vicinity during the encounter. At the end of the conversation, Respondent was granted meal and was not reprimanded in any way.

Wancel explained that after the conversation had concluded, Respondent proceeded to head toward the muster room, through doors that were approximately eight to ten feet away. As Respondent approached the doors, he clearly heard her say the word, "Asshole." This was the only word Wancel heard her say after she left the desk. He did not hear her make any statement resembling "oh my God" or "my God." Wancel was able to clearly hear what Respondent said even though she was walking away from him at the time.

Upon hearing Respondent say the word "asshole," Pascal called Respondent back to the desk and asked her what she said. Respondent replied, "I said nothing." Pascal directed Respondent to leave the desk area and go to meal. After the incident, Wancel and Pascal conferred with each other about what Respondent had said and determined disciplinary action was needed.

Not all sectors got meal relief on the night of September 15, 2011. Wancel added that one of the sector cars was not granted their meal which was at 7:00 p.m. due to the shooting earlier in the day. Finally, when asked if he was sure Respondent had said the word "asshole" Wancel stated, "I 100 percent, without a doubt, heard her state that."

On cross-examination, Wancel testified that to his recollection Police Officer Stewart was the one who relieved Respondent at her post. Wancel could not recall how Stewart got to the fixed post. Wancel did not know if it was in violation of the Patrol Guide to ask for meal relief. When Wancel asked her to raise her voice, Respondent

raised her voice but also rolled her eyes and smirked. There were approximately five prisoners in the holding cells at the time. Wancel stated that he would hear the prisoners from his right if they were screaming, and to his recollection on the date of incident, they were not screaming.

On redirect examination, Wancel testified that Respondent was not disciplined for calling the TS and asking for a meal relief. When asked if there was anyone else speaking when Wancel heard the word "asshole," Wancel replied, "No, [I] just heard the word asshole coming from [Respondent's] voice." Wancel sent Stewart to relieve Respondent at approximately 8:05 p.m.

Upon further questioning by the Court, Wancel stated that Respondent's post was approximately a mile from the station house.

Lieutenant Adrienne Pascal

Pascal, an 18-year member of the Department, is currently assigned as the Integrity Control Officer (ICO) for the 101 Precinct. On September 15, 2011, she had known Respondent for approximately seven months. They worked together regularly during that period because she was Respondent's supervisor. She testified that on the day in question, Respondent was assigned to a post that had been designated a fixed post due to the high crime activity in the area. It was normal procedure for an officer assigned to a fixed post to call the desk, not the TS, to inquire about meal relief. Meal was granted based on the needs of the Department.

At 7:48 p.m. on September 15, 2011, Pascal saw Respondent at her post, inspected and signed her Activity Log. Upon her return to the station house, Pascal

learned from Wancel that Respondent had called the TS numerous times about getting meal relief. Pascal felt that this was rude of Respondent because the precinct was busy. She explained, "To keep calling and calling, after a while, it becomes a nuisance, especially when you have so much going on in the precinct." Respondent had a radio on her and would have, therefore, been aware of the conditions in the precinct. Pascal did not recall if Respondent had been assigned a vehicle that day.

Pascal was standing next to Wancel behind the desk when Respondent approached.

Police Officers Simco, Müller, Zappia, and Hayes were present in the vicinity at the time. Pascal asked Respondent why she had on numerous occasions "rudely" called the TS inquiring about her meal. Pascal was trying to get an explanation from Respondent but was not screaming at her. To her recollection, Wancel was not screaming either. In response, Respondent smiled and rolled her eyes. Pascal took this as a sign of disrespect, but she did not take any disciplinary action against Respondent at that point. She just told Respondent to go to meal.

As Respondent walked away through the double doors, Pascal heard her say the word "asshole." No one else was speaking at the time, and to Pascal's recollection no noise was coming from the holding cells. Although Respondent was facing away from her when she made the remark, Pascal clearly heard what Respondent said and was shocked by it. Pascal believed that Respondent directed the word "asshole" at Wancel and herself (Pascal). It was the only word Pascal heard Respondent say. Respondent was not having a conversation with anyone at the time. Pascal did not hear Respondent say anything similar to "oh my God" or "my God." Pascal directed Respondent to return to

the desk and asked her to repeat what she said. Respondent replied that she did not say anything. Respondent was still smiling and rolling her eyes.

On cross-examination, Pascal admitted that she was not present when Respondent called the TS. Wancel informed her that Respondent had called “numerous times,” but Pascal did not know exactly how many times Respondent called. According to Pascal, it was not unusual for an officer to call the TS with regard to meal depending on the circumstances. Pascal did not recall Respondent indicating that she had to go to the bathroom when she entered the station house. Pascal said to her recollection, Respondent said “asshole” singular not “assholes” plural. Pascal found it disrespectful for Respondent to smile while she (Pascal) asked her a question. She agreed that smiling or smirking and rolling your eyes are not violations of the Patrol Guide.

Upon questioning by the Court, Pascal testified that Wancel seemed surprised when Respondent said “asshole.” This confirmed to Pascal that she had heard Respondent’s remark correctly. Neither Pascal nor Wancel used profanity toward Respondent during their discussion with her at the desk.

During redirect examination, Pascal testified that she and the officers who were present near the desk were all interviewed on the day of the incident. At no point prior to the interviews did she meet with the other officers to discuss what they heard.

Respondent’s Case

Respondent testified in her own behalf.

Respondent

Respondent has been a member of the Department for approximately seven years and is currently assigned to the 32 Precinct.

Respondent said that she was a probationary police officer for almost two years. She said that during her time as a probationary police officer she may have had a few minor violations but was never suspended.

Respondent recalled on the evening of September 15, 2011, she was working from 3:00 p.m. to 11:35 p.m. and was assigned to a "fixer post"¹ located at Beach 26 Street and Seagirt Avenue. She explained that this was a "face to face" post. You have to "wait for somebody before you leave."

Respondent testified that at 7:45 p.m., she called the TS operator to make sure her meal relief was coming. Respondent testified that the TS is called frequently by members of service. She stated, "Police Officers call the TS, civilians call the TS, everybody calls the TS. I guess it's the number, it's the main number that you call. You press zero, that's directly the TS." Respondent stated that she did not call any supervisors because she thought they were busy. Respondent elaborated that she spoke to Simco and asked about her meal relief, and at no point during the conversation did she use profanity. Respondent said Simco informed her that he would "pass on the message, something like that."

Respondent testified that around 8:05 p.m., she called again and spoke to Simco, and asked if someone was coming to relieve her. Respondent stated that Simco said the sergeant was working on it. She again stated that she did not use any profanity during their phone conversation.

¹ As in transcript, a "fixed" post.

Respondent testified that she eventually was relieved by Stewart and proceeded to head back to the station house to take her meal. Respondent said it took her approximately five to ten minutes to get back to the precinct because she was riding a scooter. When asked directly if Respondent ever raised her voice to Simco on the telephone, or was at any time discourteous, Respondent said, "No."

Respondent testified that upon arriving at the 101 Precinct, she proceeded to the front desk, where according to Respondent, Wancel and Pascal began yelling at her. Respondent elaborated that Wancel and Pascal were yelling at her for calling so many times about her meal relief. Respondent testified that she is certain she at no point smiled or rolled her eyes at Wancel and Pascal during their conversation. Respondent explained that she had to urgently use the bathroom after standing at her fixed post for approximately five hours. Respondent testified that after she talked to Wancel and Pascal, she felt "like dirt." Respondent used DX 1B to show the Court where she went after the conversation at the desk had concluded. Respondent indicated on DX 1A where she was standing, and where the other officers were positioned during her conversation with Wancel and Pascal.

Respondent testified that as she was walking away her back was to Wancel and Pascal. Respondent admits to saying something while she was walking towards the muster room through the double doors. However, Respondent stated what she said was something similar to "oh my God." Respondent elaborated that she made the statement "oh my God" in reaction to her feeling that Wancel and Pascal were yelling at her for no reason. Respondent testified that she at no time used any foul language or profanity, and did not call Wancel, Pascal, or any other member of service present at the time an

“asshole.” Respondent testified that she knew the consequences for calling a superior officer an asshole stating, “I think you get a CD [Command Discipline]. You can get a CD. Respondent explained that the charge that would be brought against someone if they called a superior officer an “asshole” would be discourtesy. Respondent testified that she has never called a superior officer a derogatory name before, and has never been accused of, or charged with, a CD or Charges and Specifications alleging such an action.

Respondent stated that after she was called back to the desk by Pascal, she was asked what she said. Respondent explained that she told Pascal that she said nothing. Pascal then told her to “go to meal. You’re going to get one.” Respondent explained she was not sure what Pascal meant when she said, “You’re going to get one.”

Respondent admitted that prior to the incident on September 15, 2011, she had filed a verbal complaint against Pascal through the Office of Equal Employment Opportunity (OEEO). Respondent explained that she went to Lieutenant Dealy, the ICO at the 101 Precinct at the time, who called OEEO and they took her complaint over the telephone. Respondent testified that she filed the complaint against Pascal because, “I am scooter qualified. Usually when [sic] put me on special post, I usually take the scooter because I am scooter qualified. There were other people assigned as well to posts over there. She told them to take a scooter. She told me that I have to go on foot.’ Finally, Respondent testified that other than the current charges, she has never been suspended or the subject of other serious discipline.

On cross-examination, Respondent testified that she had been at the 101 Precinct for about five years prior to September 15, 2011. Respondent admitted that as of September 15, 2011, she was familiar with and had no previous issues with Zappia,

Muller, Hayes, and Simco. Respondent agreed that her interactions with Zappia, Muller, Hayes, and Simco were strictly professional and never personal. Respondent testified that she is not personally aware of any CDs or minor violations filed against her by Wancel.

Respondent elaborated that she filed an OEEO complaint against Pascal because Respondent felt she was being discriminated against when she was not able to take a scooter to her foot post. Respondent admitted that in order to be scooter qualified, she had to be recommended by her supervisor. Respondent added she had no knowledge whether Pascal played any role in her becoming scooter qualified.

Respondent testified that she was aware that the Department conducted annual evaluations based on a 1-5 rating system. Respondent agreed that at the end of each annual review process, a supervisor meets with a member of the service to discuss what the rating will be. Respondent knows that there is also Performance Level Monitoring, where a police officer is observed a little more closely based on their level of monitoring. Respondent testified that in 2011, she received a 3.5 on her evaluation, and in 2010, she received a 2.5 on her evaluation. Respondent admitted that a 2.5 is considered Below Standards. Respondent stated she could not remember ever being placed on Level II- Performance Level Monitoring for disciplinary reasons. Respondent explained that she was placed on Level I monitoring in 2010. Respondent agreed that when an officer gets excessive minor violations, this can lead to a CD, which is slightly more serious. Respondent testified that she did not recall receiving three separate CDs dated October 11, 2007, October 16, 2007, and October 16, 2009. Respondent remembered receiving a CD on August 8, 2009, for not reporting a Traffic Division detail with an authorized

traffic safety vest. Respondent stated that she thought the CD from August 8, 2009 was dismissed because she purchased the new traffic vest. She did remember receiving two other CDs from October 5, 2010, and June of 2011.

Respondent testified that during the evening of September 15, 2011, she had been issued a Department scooter for her post. Respondent admitted to calling the TS operator fifteen minutes prior to her designated meal time. Respondent added that she knew Simco was assigned to the TS and that she could have called Wancel, who was assigned as desk officer that day, but chose not to. Respondent testified that there was no rude interaction between Simco and herself. According to Respondent, they were both respectful and courteous. Respondent admitted that at no point did Simco tell Respondent she was not going to get her meal.

Respondent testified that around 7:45 p.m., Pascal came to her post and signed Respondent's Activity Log. Respondent did not recall if she asked Pascal about her meal. Respondent admitted that at no point did she inform Pascal that she had to use the bathroom or that she had a bathroom emergency. Respondent testified she was relieved around 8:05 p.m. by Stewart, who was either driving a radio motor patrol car (RMP) or was dropped off at the time. Respondent stated she could not recall whether she made any stops after being relieved for meal and prior to her return to the station house. [Respondent used DX's 1A and 1B to indicate to the Court, where the door to enter the precinct is in comparison to the double doors leading to the muster room.]

Respondent testified that after she was relieved by Stewart and prior to her arrival at the precinct, she had no communication with Pascal or Wancel. Respondent stated after the incident at the desk she was sent to meal and immediately went to the bathroom

prior to sitting down in the muster room. Respondent admitted she remembered that during her official Department interview, she had stated, "I went to the hallway. I just went to the cafeteria. I think I sat down for a little bit, and then I went upstairs."

Respondent testified to her recollection only Wancel, Pascal, and Simco were in the area during the time the incident took place. Respondent stated she did not see any of the other officers mentioned being at or near the front desk during the time of the incident. [Respondent used DX 1A and 1B to show the court where she was standing and who she saw at the front desk during the time of the incident.]

Respondent testified that she was informed by Inspections Unit at 11:00 p.m. she would be suspended as of 9:15 p.m. on September 15, 2011. Respondent testified that she felt happy upon entering the precinct but after her conversation with Wancel and Pascal she felt like "dirt." Respondent admitted that Wancel and Pascal did not threaten her or use derogatory or profane language towards her. Respondent agreed that the tone in which Pascal asked her to return to the desk was "loud, but not disrespectful." Respondent admitted that Pascal asked Respondent multiple times what she had said, and she answered each time by saying she said nothing. Respondent admitted she did in fact say something. Respondent stated she said something to the effect of "oh my God" or "my God." Respondent stated at no point during the conversation with Wancel and Pascal did she feel like she was being discourteous. Respondent added when she said, "Oh my God" or "my God," "I was speaking in a very low voice, and I was so far away from the desk, and I was practically talking to myself really." Respondent claimed at no point in time on September 15, 2011 into September 16, 2011 was she informed of the reason for her suspension.

On redirect examination, Respondent testified that she had a bathroom emergency, but she did not tell Pascal, when Pascal signed her Activity Log because it was not urgent at the time. Respondent elaborated that she did not inform Simco of the bathroom emergency when she called because she thought that someone was already coming to relieve her. Respondent testified that she was not expecting to be yelled at by Wancel and Pascal upon returning to the precinct. Respondent added, when called back by Pascal and asked what she said, Respondent stated, "I just wanted it to be done and over with. . . I was like nothing, hoping it would stop then and there, hoping it would be over and I would just go to meal, and that's it."

Upon further questioning by the Court, Respondent testified she did recall losing vacation days due to receiving a CD. However, Respondent testified the ICO of the 101 Precinct processed the CD, not Pascal. Respondent admits Pascal was not involved in giving her the previous CDs, she stated, "Not Lieutenant Pascal. She, I think, gave me a couple of minor violations."

FINDINGS AND ANALYSIS

Respondent is charged with being discourteous towards Sergeant Wancel and Lieutenant Pascal. Respondent wanted to be relieved from a fixed post for meal. She called the TS several times to inquire. She never called the desk. When she eventually got back to the command, she was spoken to by Wancel and Pascal about calling the TS regarding meal relief. As she walked away from the desk and approached the double doors, both supervisors testified that they heard Respondent say, "Asshole." Simco, who

was working the TS also testified that he heard Respondent say, "Assholes" after her conversation with Wancel and Pascal.

Respondent was called back to the front desk but denied saying anything. At trial she alleged that she said, "My God" or "Oh my God," but no one heard either of those remarks uttered by Respondent.

Respondent acknowledges being upset about her conversation with Wancel and Pascal.

Given the totality of the circumstances, I accept the testimony of Wancel, Pascal and Simco and reject the testimony of Respondent. Respondent was upset and conveyed her displeasure by uttering the word, "Asshole" to indicate her disrespect for the sergeant and lieutenant who had just spoken to her. Respondent is found Guilty of the single specification in this case.

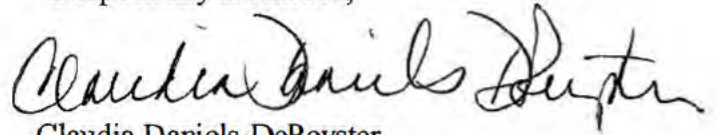
PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 10, 2006. Information from her personnel record that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

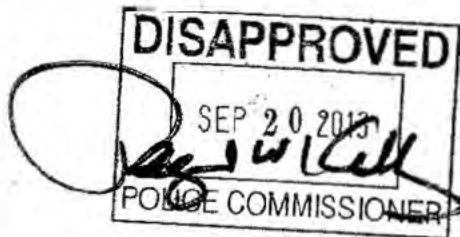
The Department has requested that Respondent forfeit 32 days previously served on suspension in this case. Under all of the circumstances this is a reasonable

recommendation. It is therefore recommended that Respondent forfeit the 32 days she previously served on suspension as a penalty in this matter.

Respectfully submitted,



Claudia Daniels-DePeyster
Assistant Deputy Commissioner ■ Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MARJORIE PIERRE
TAX REGISTRY NO. 942355
DISCIPLINARY CASE NO. 2011-5757

In 2012, Respondent received an overall rating of 3.0 "Competent" on her annual performance evaluation. She was rated 2.5 "Competent/Low" in 2010 and 3.5 "Highly Competent/Competent" in 2011. She has been awarded one medal for Excellent Police Duty. [REDACTED]

[REDACTED] Respondent has no prior formal disciplinary record.

For your consideration.



Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials